

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Aug 04, 2022**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

PAUL L.,

Plaintiff,

v.

KILOLO KIJAKAZI,  
ACTING COMMISSIONER OF  
SOCIAL SECURITY,<sup>1</sup>

Defendant.

No. 1:20-cv-03198-SMJ

**ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT**

Before the Court are the parties' cross-motions for summary judgment. ECF No. 18, 23. Attorney D. James Tree represents Paul L. (Plaintiff); Special Assistant United States Attorney Heidi Triesch represents the Commissioner of Social Security (Defendant). After reviewing the administrative record and the briefs filed

---

<sup>1</sup> Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew M. Saul as the defendant in this suit. No further action need be taken to continue this suit. *See* 42 U.S.C. § 405(g).

1 by the parties, the Court grants Defendant's Motion for Summary Judgment and  
2 denies Plaintiff's Motion for Summary Judgment.

### 3 4 **JURISDICTION**

5 Plaintiff filed an application for Supplemental Security Income on September  
6 22, 2017, alleging disability beginning September 1, 2017, due to back injuries/pain,  
7 Barrett's syndrome, bone spurs in both feet, hernia, right shoulder pain, torn  
8 meniscus in the left knee, high blood pressure, and obesity. Tr. 71-72. The  
9 application was denied initially and upon reconsideration. Tr. 98-106, 110-16. An  
10 Administrative Law Judge (ALJ) held a hearing on December 10, 2019, Tr. 31-69,  
11 and issued an unfavorable decision on January 15, 2020. Tr. 15-25. Plaintiff  
12 requested review by the Appeals Council and the Appeals Council denied the request  
13 on September 14, 2020. Tr. 1-5. The ALJ's January 2020 decision became the final  
14 decision of the Commissioner, which is appealable to the district court pursuant to  
15 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review on November 13,  
16 2020. ECF No. 1.

### 17 18 19 20 21 22 **STATEMENT OF FACTS**

23 Plaintiff was born in 1965 and was 52 years old when he filed his application.  
24 Tr. 71. He completed high school and worked as a construction day laborer for many  
25 years. Tr. 194. Plaintiff also has worked buying and reselling farm equipment. Tr.  
26 44-46, 194. At the time of the hearing, he and his wife owned and managed a farm.

1 Tr. 47. He testified that his wife did the majority of the work around the farm, and  
2 that his back and other physical impairment prevented him from doing any strenuous  
3 labor. Tr. 35-57.  
4

## 5 6 STANDARD OF REVIEW

7 The ALJ is responsible for determining credibility, resolving conflicts in  
8 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,  
9 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed *de novo*, with  
10 deference to a reasonable interpretation of the applicable statutes. *McNatt v. Apfel*,  
11 201 F.3d 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only  
12 if it is not supported by substantial evidence or if it is based on legal error. *Tackett*  
13 *v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as  
14 being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put  
15 another way, substantial evidence is such relevant evidence as a reasonable mind  
16 might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S.  
17 389, 401 (1971). If the evidence is susceptible to more than one rational  
18 interpretation, the Court may not substitute its judgment for that of the ALJ. *Tackett*,  
19 180 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595,  
20 599 (9th Cir. 1999). If substantial evidence supports the administrative findings, or  
21 if conflicting evidence supports a finding of either disability or non-disability, the  
22 ALJ's determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230  
23  
24  
25  
26  
27  
28

1 (9th Cir. 1987). Nevertheless, a decision supported by substantial evidence will be  
2 set aside if the proper legal standards were not applied in weighing the evidence and  
3 making the decision. *Browner v. Secretary of Health and Human Services*, 839 F.2d  
4 432, 433 (9th Cir. 1988).

### 6 SEQUENTIAL EVALUATION PROCESS

7  
8 The Commissioner has established a five-step sequential evaluation process  
9 for determining whether a person is disabled. 20 C.F.R. § 416.920(a); *Bowen v.*  
10 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the claimant bears  
11 the burden of establishing a prima facie case of disability. *Tackett*, 180 F.3d at 1098-  
12 1099. This burden is met once a claimant establishes that a physical or mental  
13 impairment prevents the claimant from engaging in past relevant work. 20 C.F.R. §  
14 416.920(a)(4). If a claimant cannot perform past relevant work, the ALJ proceeds to  
15 step five, and the burden shifts to the Commissioner to show (1) the claimant can  
16 make an adjustment to other work; and (2) the claimant can perform specific jobs  
17 that exist in the national economy. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d  
18 1190, 1193-94 (9th Cir. 2004). If a claimant cannot make an adjustment to other  
19 work in the national economy, the claimant will be found disabled. 20 C.F.R. §  
20 416.920(a)(4)(v).  
21  
22  
23  
24  
25  
26  
27  
28

**ADMINISTRATIVE DECISION**

On January 15, 2020, the ALJ issued a decision finding Plaintiff was not disabled as defined in the Social Security Act. Tr. 15-25.

At step one, the ALJ found Plaintiff had not engaged in substantial gainful activity since the application date. Tr. 17.

At step two, the ALJ determined Plaintiff had the following severe impairments: lumbar and thoracic degenerative disc disease, obstructive sleep apnea, left shoulder degenerative joint disease, bilateral feet bone spurs, left heel achilles tendon condition, torn bicep of the left arm, left knee degenerative joint disease, left elbow tear of bicep tendon insertion site, and obesity. *Id.*

At step three, the ALJ found Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments. Tr. 19.

The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found he could perform light work, with the following additional limitations:

The claimant will be provided a sit/stand option in the workplace. The claimant is capable of engaging in unskilled, repetitive routine tasks in two-hour increments. He can occasionally overhead reach with the left upper extremity. He can frequently handle and finger. The claimant can occasionally stoop and crouch but can never crawl, kneel, climb stairs and ramps, and climb ladders, ropes, or scaffolds. The claimant should not engage in balancing, working at heights, working in proximity to hazardous conditions, or ambulating across uneven surfaces.

1 *Id.*

2 At step four, the ALJ found Plaintiff was unable to perform his past relevant  
3 work as a construction worker, buyer, and maintenance mechanic. Tr. 23-24.

4 At step five, the ALJ determined that, based on the testimony of the vocational  
5 expert, and considering Plaintiff's age, education, work experience, and RFC,  
6 Plaintiff could perform jobs that existed in significant numbers in the national  
7 economy, including the jobs of production assembler, cashier, and outside deliverer.  
8  
9 Tr. 24-25.

10 The ALJ thus concluded Plaintiff was not under a disability within the  
11 meaning of the Social Security Act at any time from the application date through the  
12 date of the decision. Tr. 25.

## 13 ISSUES

14 The question presented is whether substantial evidence supports the ALJ's  
15 decision denying benefits and, if so, whether that decision is based on proper legal  
16 standards.

17 Plaintiff contends the ALJ erred by (1) not properly assessing the grid rules,  
18 (2) not properly assessing the listings, (3) not properly assessing Plaintiff's  
19 testimony, (4) not properly assessing PA-C Richmond's reports, and (5) not  
20 assessing Plaintiff's right shoulder disorder.

21 //

## DISCUSSION

### 1. Step Two

Plaintiff argues that at step two, the ALJ erred in failing to find his right shoulder disorder to be a severe impairment. ECF No. 18 at 20-21.

At step two of the sequential evaluation process, the ALJ must determine whether the claimant has any medically determinable severe impairments. 20 C.F.R. § 416.920(a)(ii). An impairment is “not severe” if it does not “significantly limit” the ability to conduct “basic work activities.” 20 C.F.R. § 416.922(a). Basic work activities are “abilities and aptitudes necessary to do most jobs.” 20 C.F.R. § 416.922(b). “An impairment or combination of impairments can be found not severe only if the evidence establishes a slight abnormality that has no more than a minimal effect on an individual’s ability to work.” *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996) (internal quotation marks omitted). The claimant bears the burden of demonstrating that an impairment is medically determinable and severe. *Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 689 (9th Cir. 2009).

The ALJ identified a number of severe impairments at step two, including issues with Plaintiff’s left shoulder, then found that all other impairments in the record were non-severe because they caused no more than minimal vocationally relevant limits, did not last for a sufficient duration, or Plaintiff responded to

1 treatment Tr. 18. The ALJ did not specifically identify any right shoulder conditions  
2 in this general discussion. *Id.*

3 Plaintiff argues the ALJ erred in failing to discuss his right shoulder problems  
4 and argues that imaging and the opinions of the consultative examiner and state  
5 agency reviewing doctors establish Plaintiff's right shoulder condition as a severe  
6 impairment. ECF No. 18 at 20-21. Defendant argues that even though the ALJ did  
7 not specifically discuss Plaintiff's right shoulder in the step two discussion, he  
8 adequately addressed the evidence later in the decision, noting that the imaging of  
9 Plaintiff's shoulder was mild and he demonstrated intact strength and ability to  
10 manipulate objects. ECF No. 23 at 2-5. Defendant further argues the ALJ adequately  
11 discussed why greater limitations on Plaintiff's use of his right arm were not  
12 warranted, and argues that Plaintiff did not challenge the ALJ's consideration of the  
13 consultative examiner or the state agency doctors' opinions. *Id.*

14 The Court finds the ALJ did not err. Despite failing to discuss Plaintiff's right  
15 should condition at step two, the ALJ later noted the mild imaging results of  
16 Plaintiff's right shoulder, and addressed the right upper extremity limitations  
17 assessed by the consultative examiner and the state agency doctors. Tr. 21-23. The  
18 ALJ's interpretation of the record as demonstrating no more than mild limitations is  
19 reasonable. The Court also notes that the record contains only two notes of Plaintiff  
20 reporting right shoulder pain and does not show any ongoing treatment or  
21



1 consultations for this condition. Tr. 306-07, 368-69. The Court finds the ALJ's  
2 discussion is sufficient.

## 3 4 **2. Step Three**

5 At step three of the sequential evaluation process, the ALJ considers whether  
6 one or more of the claimant's impairments meets or equals an impairment listed in  
7 Appendix 1 to Subpart P of the regulations. 20 C.F.R. § 416.920(a)(4)(iii). Each  
8 Listing sets forth the "symptoms, signs, and laboratory findings" which must be  
9 established for a claimant's impairment to meet the Listing. *Tackett v. Apfel*, 180  
10 F.3d 1094, 1099 (9th Cir. 1999). If a claimant meets or equals a Listing, the claimant  
11 is considered disabled without further inquiry. 20 C.F.R. § 416.920(d).

12 The ALJ found Plaintiff's conditions did not meet or equal any listed  
13 impairment, and did not offer any detailed analysis of any specific Listing. Tr. 19.  
14 Plaintiff argues the ALJ erred at step three when he failed to find Plaintiff's  
15 conditions met or equaled Listing 1.02A<sup>2</sup> or 3.02C(3). ECF No. 18 at 5-7.

### 16 17 **a. Listing 1.02A – Major Dysfunction of a Joint**

18 Listing 1.02A requires a showing of:

19 gross anatomical deformity (e.g., subluxation, contracture, bony  
20 or fibrous ankylosis, instability) and chronic joint pain and  
21 stiffness with signs of limitation of motion or other abnormal  
22 motion of the affected joint(s), and findings on appropriate

---

23  
24  
25  
26  
27 <sup>2</sup> The musculoskeletal listings have been significantly revised since the ALJ issued  
28 his decision. All discussion of Listing 1.02 refers to the former version of the  
Listings, available at Program Operations Manual System (POMS) DI 34121.013

1 medically acceptable imaging of joint space narrowing, bony  
2 destruction, or ankylosis of the affected joint(s). With:

3 A. Involvement of one major peripheral weight-bearing joint  
4 (i.e., hip, knee, or ankle), resulting in inability to ambulate  
5 effectively, as defined in 1.00 B2b;

6 20 C.F.R. Part 404, Subpart P, Appendix 1, §1.02. An inability to ambulate  
7 effectively is defined as:

8 an extreme limitation of the ability to walk; i.e., an impairment(s)  
9 that interferes very seriously with the individual's ability to  
10 independently initiate, sustain, or complete activities. Ineffective  
11 ambulation is defined generally as having insufficient lower  
12 extremity functioning (see 1.00J) to permit independent  
13 ambulation without the use of a hand-held assistive device(s) that  
limits the functioning of both upper extremities.

14 To ambulate effectively, individuals must be capable of  
15 sustaining a reasonable walking pace over a sufficient distance  
16 to be able to carry out activities of daily living. They must have  
17 the ability to travel without companion assistance to and from a  
18 place of employment or school. Therefore, examples of  
19 ineffective ambulation include, but are not limited to, the  
20 inability to walk without the use of a walker, two crutches or two  
21 canes, the inability to walk a block at a reasonable pace on rough  
22 or uneven surfaces, the inability to use standard public  
23 transportation, the inability to carry out routine ambulatory  
24 activities, such as shopping and banking, and the inability to  
climb a few steps at a reasonable pace with the use of a single  
hand rail. The ability to walk independently about one's home  
without the use of assistive devices does not, in and of itself,  
constitute effective ambulation.

25 *Id.* at 1.00B2b.  
26  
27  
28

1 Plaintiff argues the objective evidence regarding his severe foot, ankle, and  
2 knee impairments, along with evidence of antalgic gait, limited and painful range of  
3 motion, and poor flexibility all show a listing-level impairment. ECF No. 18 at 6.  
4 He further asserts that the ALJ's RFC finding of no walking over rough or uneven  
5 surfaces indicates an inability to ambulate effectively, consistent with the listing. *Id.*  
6 Defendant argues that the record does not establish all of the criteria, and that there  
7 is no evidence Plaintiff used an assistive device or had extreme limitations in his  
8 ability to walk. ECF No. 23 at 7. Defendant further asserts that the limitation on  
9 walking on uneven surfaces in the RFC does not establish Plaintiff was unable to  
10 ambulate effectively. *Id.* Finally, Defendant asserts the ALJ was not required to  
11 discuss possible listing equivalence unless the claimant presented medical evidence  
12 to establish limitations equivalent to the listing, which Plaintiff did not do. *Id.* at 7-  
13 8.

14 The Court finds the ALJ did not err. "A boilerplate finding is insufficient to  
15 support a conclusion that a claimant's impairment" does not meet or equal a listed  
16 impairment. *Lewis v. Apfel*, 236 F.3d 503, 512 (9th Cir. 2001). However, the ALJ is  
17 not required to state why a claimant fails to satisfy every criteria of the listing if they  
18 adequately summarize and evaluate the evidence. *See Gonzalez v. Sullivan*, 914 F.2d  
19 1197, 1200-01 (9th Cir.1990); *Lewis*, 236 F.3d at 512. The ALJ sufficiently  
20 discussed the available evidence, including evidence regarding Plaintiff's activities  
21

1 and the minimal objective evidence. Tr. 20-23. There is no evidence in the record  
2 that Plaintiff uses an assistive device that limits the function of both hands and no  
3 medical source has assessed limitations consistent with the listing. The ALJ's RFC  
4 finding is not consistent with an inability to ambulate effectively. For these reasons,  
5 Plaintiff has not presented evidence consistent with listing-level severity.  
6  
7

8 **b. Listing 3.02C – Chronic Respiratory Disorder**

9 Listing 3.02C(3), concerning chronic respiratory disorders, refers to chronic  
10 impairment of gas exchange demonstrated by oxygen saturation levels less than or  
11 equal to a value based on the altitude at the test site, measured by pulse oximetry  
12 either at rest or during or after a 6-minute walk test. 20 C.F.R. Part 404, Subpart P,  
13 Appendix 1, §3.02C(3). The introduction to the listing explains the various  
14 requirements for the pulse oximetry testing, including that the claimant must be  
15 medically stable at the time of the test; the measurements must be recorded on room  
16 air without oxygen supplementation; the pulse oximetry measurement must be stable  
17 over a 15-second interval; and the report must include the claimant's name, date of  
18 test, the altitude or location of the test, and a graphical printout of the SpO<sub>2</sub> value  
19 and pulse wave. 20 C.F.R. Part 404, Subpart P, Appendix 1, §3.00H.  
20  
21  
22  
23  
24

25 Plaintiff argues that the results of a sleep study performed in Yakima,  
26 Washington in August 2018 show listing-level oxygen saturation levels based on the  
27 altitude. ECF No. 18 at 6-7. Defendant argues sleep-related breathing disorders are  
28

1 not evaluated under Listing 3.00, and instead are evaluated under other listings based  
2 on the long-term effects the disorder may have on other body systems. ECF No. 23  
3 at 8. Defendant further asserts that the record does not show the requisite level of  
4 impairment to meet Listing 3.02C. *Id.* at 8-9.

5  
6 The Court finds the ALJ did not err. Listing 3.00 specifically notes that sleep-  
7 related breathing disorders, such as sleep apnea, are evaluated based on the  
8 complications that result from prolonged transient episodes of interrupted breathing  
9 during sleep, such as hypertension, heart failure, or disturbance in mood and  
10 cognition. 20 C.F.R. Part 404, Subpart P, Appendix 1, §3.00P. Plaintiff has not made  
11 any argument regarding ongoing complications from sleep apnea that impact other  
12 body systems.  
13  
14  
15

16 Furthermore, even if sleep apnea were a qualifying condition under Listing  
17 3.02C, the record from the sleep study does not contain the requisite findings  
18 regarding the pulse oximetry testing with respect to the stability of the measurements  
19 over 15-second intervals or the required graphical display of SpO<sub>2</sub> and pulse wave.  
20 Tr. 436-42. The record does not contain evidence of a listing-level breathing  
21 disorder. Therefore, the ALJ did not err in failing to discuss the listing in detail.  
22  
23  
24

### 25 **3. Plaintiff's Symptom Statements**

26 Plaintiff alleges the ALJ erred in rejecting his symptom testimony without  
27 providing adequate reasons. ECF No. 18 at 7-15.  
28

1 It is the province of the ALJ to make determinations regarding a claimant's  
2 subjective reports. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).  
3 However, the ALJ's findings must be supported by specific cogent reasons. *Rashad*  
4 *v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent affirmative evidence of  
5 malingering, the ALJ's reasons for rejecting a claimant's testimony must be  
6 "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir.  
7 1996); *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995).

8  
9  
10 The ALJ found Plaintiff's medically determinable impairments could  
11 reasonably be expected to cause the alleged symptoms; however, he found Plaintiff's  
12 statements concerning the intensity, persistence and limiting effects of his symptoms  
13 were not entirely consistent with the medical evidence and other evidence in the  
14 record. Tr. 20. Specifically, the ALJ found Plaintiff's allegations to be undermined  
15 by the objective evidence, conservative and intermittent treatment, some  
16 improvement with treatment, Plaintiff's activities, and his refusal of medication and  
17 declining surgery. Tr. 20-22.

18  
19  
20 Plaintiff argues the ALJ's discussion is not an accurate reflection of the record  
21 because the ALJ took facts out of context, exaggerated the level of Plaintiff's  
22 activities, and failed to consider his reasonable explanation for not pursuing surgery.  
23 ECF No. 18 at 7-15. Defendant argues the ALJ reasonably considered the objective  
24 findings, Plaintiff's treatment, and his activities, arguing Plaintiff's alternative  
25  
26  
27  
28

1 interpretation of the record does not render the ALJ's interpretation unreasonable.  
2 ECF No. 23 at 9-13.

3       The Court finds the ALJ did not err. An ALJ may consider evidence of the  
4 type and effectiveness of treatments received in assessing the reliability of a  
5 claimant's symptom allegations. Social Security Ruling 16-3p. The ALJ noted  
6 Plaintiff's treatment was largely conservative, and that he declined prescription  
7 medications and surgery, which the ALJ found indicated his conditions were  
8 manageable. Tr. 22. Furthermore, the ALJ considered Plaintiff's activities, including  
9 his work on the family farm and fixing up farm equipment. A claimant's daily  
10 activities may support an adverse credibility finding if the claimant's activities  
11 contradict his other testimony. *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007). The  
12 Court finds the ALJ's interpretation of these activities as inconsistent with Plaintiff's  
13 testimony of debilitating limits was reasonable.  
14  
15  
16  
17  
18

19       Although it cannot serve as the sole ground for rejecting a claimant's symptom  
20 statements, objective medical evidence is a "relevant factor in determining the  
21 severity of the claimant's pain and its disabling effects." *Rollins v. Massanari*, 261  
22 F.3d 853, 857 (9th Cir. 2001). The ALJ reasonably found the objective findings  
23 throughout the record did not support the claimed extent of Plaintiff's limitations,  
24 despite some findings of limitation based on the imaging. The Court finds the ALJ's  
25 determination is supported by substantial evidence.  
26  
27  
28

#### 4. Medical Opinion Evidence

Plaintiff argues the ALJ improperly disregarded the opinion from his treating provider, PA-C Daniel Richmond. ECF No. 18 at 15-20.

For claims filed on or after March 27, 2017, new regulations apply that change the framework for how an ALJ must weigh medical opinion evidence. Revisions to Rules Regarding the Evaluation of Medical Evidence, 2017 WL 168819, 82 Fed. Reg. 5844 (Jan. 18, 2017); 20 C.F.R. § 416.920c. The new regulations provide the ALJ will no longer give any specific evidentiary weight to medical opinions or prior administrative medical findings, including those from treating medical sources. 20 C.F.R. § 416.920c(a). Instead, the ALJ will consider the persuasiveness of each medical opinion and prior administrative medical finding, regardless of whether the medical source is an Acceptable Medical Source. 20 C.F.R. § 416.920c(c). The ALJ is required to consider multiple factors, including supportability, consistency, the source's relationship with the claimant, any specialization of the source, and other factors (such as the source's familiarity with other evidence in the file or an understanding of Social Security's disability program). *Id.* The regulations make clear that the supportability and consistency of an opinion are the most important factors, and the ALJ must articulate how they considered those factors in determining the persuasiveness of each medical opinion or prior administrative medical finding. 20 C.F.R. § 416.920c(b). The ALJ may explain how they



1 considered the other factors, but is not required to do so, except in cases where two  
2 or more opinions are equally well-supported and consistent with the record. *Id.*

3  
4 Supportability and consistency are further explained in the regulations:

5  
6 (1) Supportability. The more relevant the objective medical  
7 evidence and supporting explanations presented by a medical  
8 source are to support his or her medical opinion(s) or prior  
9 administrative medical finding(s), the more persuasive the  
10 medical opinions or prior administrative medical finding(s) will  
11 be.

12 (2) Consistency. The more consistent a medical opinion(s) or  
13 prior administrative medical finding(s) is with the evidence from  
14 other medical sources and nonmedical sources in the claim, the  
15 more persuasive the medical opinion(s) or prior administrative  
16 medical finding(s) will be.

17 20 C.F.R. § 416.920c(c). Additionally, the Ninth Circuit has held that the new  
18 regulatory framework displaces the longstanding case law requiring an ALJ to  
19 provide “specific and legitimate” or “clear and convincing” reasons for rejecting a  
20 treating or examining doctor’s opinion. *Woods v. Kijakazi*, 32 F.4th 785 (9th Cir.  
21 2022).

22 On September 11, 2018, Plaintiff’s treating provider, Daniel Richmond,  
23 completed a medical source statement, opining Plaintiff was severely limited and  
24 unable to meet the demands of even sedentary work, and would be likely to miss  
25 four or more days of work per month due to constant pain in his heels, left arm, right  
26 shoulder, and spine. Tr. 360-62.

1 The ALJ found this opinion not persuasive, noting Mr. Richmond used a  
2 check box form and did not support the opinion with a detailed explanation, and  
3 further found the opinion was not consistent with Plaintiff's active lifestyle or the  
4 treatment records and findings of the consultative examiner. Tr. 23.

6 Plaintiff argues the opinion and accompanying records contain explanation  
7 and support for the assessed limitations and that the ALJ failed to identify any  
8 inconsistency between the opinion and the other records. ECF No. 18 at 15-20.  
9 Defendant argues the ALJ reasonably considered the factors of supportability and  
10 consistency, and found the opinion lacking in explanation, unsupported by the  
11 treatment notes, and inconsistent with other opinions in the file and the majority of  
12 the records. ECF No. 23 at 13-18.

16 The Court finds the ALJ did not err. With respect to supportability, the ALJ  
17 reasonably found the opinion lacking in explanation, as Mr. Richmond's primary  
18 explanation was to direct the reader to the treatment notes. Tr. 360-62. However,  
19 Mr. Richmond's treatment notes contain few abnormal findings on exams other than  
20 subjective tenderness. Tr. 278, 323, 324, 367-71, 379-84. The ALJ also considered  
21 the opinion's consistency with evidence from medical and other sources, which he  
22 had discussed in detail earlier in the decision. The Court finds the ALJ reasonably  
23 complied with the revised rules and sufficiently considered the most important  
24 factors of supportability and consistency.  
25  
26  
27  
28

1 **5. Grid Rules**

2 Plaintiff asserts he should have been found disabled under the Medical  
3 Vocational Guidelines because he is not capable of performing a full range of light  
4 work, thus necessitating a finding of disability under the sedentary grid rules. ECF  
5 No. 18 at 4-5. Defendant argues that, because Plaintiff's RFC fell between two grid  
6 rules, the ALJ appropriately consulted a vocational expert, who identified jobs  
7 Plaintiff was capable of performing. ECF No. 18 at 18-19.

10 At step five of the sequential evaluation process, the ALJ must determine  
11 whether there are jobs that exist in significant numbers in the national economy that  
12 the claimant can perform. *Tackett v. Apfel*, 180 F.3d 1094, 1100-01 (9th Cir. 1999).  
13 The Medical Vocational Guidelines provide a streamlined mechanism for ALJs to  
14 make this determination, considering the claimant's age category, educational and  
15 work background, and exertional capability. 20 C.F.R. pt. 404, subpt P, app. 2.  
16 However, use of the Guidelines is only appropriate when a rule completely and  
17 accurately represents a claimant's limitations. *Tackett*, 180 F.3d at 1101. When a  
18 claimant's residual ability falls between two grid rules that direct different outcomes  
19 under the Guidelines, a vocational expert should be consulted to clarify the  
20 implications for the occupational base. Social Security Ruling 83-12.

26 The Court finds no error. The ALJ found Plaintiff was capable of a limited  
27 range of light work, with a sit/stand option and postural, environmental, and  
28

manipulative limitations. Tr. 19. While this does not allow for the full range of light work, the RFC also does not indicate Plaintiff is capable of only sedentary level work. The ALJ reasonably consulted a vocational expert, who identified light jobs that exist in significant numbers that Plaintiff would be capable of performing. Tr. 65-66. The ALJ did not err in failing to apply the sedentary grid rules at step five.

### **CONCLUSION**

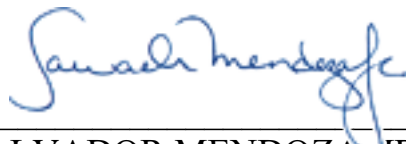
Having reviewed the record and the ALJ's findings, the Court finds the ALJ's decision is supported by substantial evidence and free of legal error.

Accordingly, **IT IS HEREBY ORDERED:**

1. Defendant's Motion for Summary Judgment, **ECF No. 23**, is **GRANTED**.
2. Plaintiff's Motion for Summary Judgment, **ECF No. 18**, is **DENIED**.
3. The Clerk's Office is directed to **ENTER JUDGMENT** for Defendant and **CLOSE** this file.

**IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and provide copies to all counsel.

**DATED** this 4<sup>th</sup> day of August 2022.



SALVADOR MENDOZA, JR.  
United States District Judge